

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)

Policies and Rules Concerning)
Toll Fraud)

)

CC Docket No. 93-292

To the Commission:

REPLY COMMENTS OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company ("Edison"), by its attorneys, and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission") hereby submits its Reply Comments in response to the Comments filed by other parties in response to the Notice of Proposed Rule Making ("NPRM") issued in the above-captioned proceeding.^{1/}

I. STATEMENT OF INTEREST

1. Edison is one of the nation's major utility companies and the largest in Illinois. Its electric service territory encompasses the northern fifth of the State of Illinois (over 11,500 square miles), including the Chicago metropolitan area and more than 390 communities. Edison

^{1/} Notice of Proposed Rule Making, 58 Fed. Reg. 65153 (December 13, 1993).

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generates electricity and distributes it to over 3.2 million customers. In addition to its fossil-fueled generation of electric energy, Edison is the nation's largest provider of nuclear generated power, with 12 nuclear reactors serving customers throughout its operating territory.

2. Toll fraud is a significant problem affecting corporate users of telecommunications services. As a large consumer of telecommunications services, Edison is concerned with its potential liability for toll fraud. Accordingly, Edison is pleased to have the opportunity to submit reply comments in this proceeding.

II. DISCUSSION

3. Edison is pleased that the Commission has proposed to adopt measures aimed at the prevention of toll fraud. While the comparative negligence approach to liability for PBX fraud proposed by the Commission goes far toward an equitable apportionment of responsibility for toll fraud losses, it does not go far enough. Edison supports the comments filed by the American Petroleum Institute ("API") which propose a more comprehensive solution to the liability issue, and one that provides all parties with incentives to

prevent the occurrence of and minimize the amount of PBX fraud.

4. API proposed that the Commission should shift liability to the carriers when they fail to act promptly to detect, and report to the customer, the occurrence of toll fraud. Under API's proposal, users would be liable for fraudulent calls only where their negligence is responsible for the fraud or where they are aware of ongoing fraud. Unlike virtually all of the other comments filed in this proceeding, API's comments recognize the importance of providing carriers with the incentive to mitigate fraud. Many of the carriers' comments argued that carriers are not in a position to prevent fraud. While a carrier may indeed not be able to prevent a hacker from breaking into a PBX, it can and should detect unusual calling patterns and immediately notify the customer of suspected fraud. If it fails to do so, the shift of liability to the carrier is entirely appropriate.

5. Another element of the API proposal which Edison strongly supports is the proposal that user liability for toll fraud be limited to the carrier's cost of providing service. Carriers should not be allowed to profit from toll fraud. As it stands now, carriers actually make money off

unauthorized calls. As long as carriers are allowed to profit from such calls, they will have little incentive to stop incidents of ongoing fraud.

6. Edison agrees with the numerous commenters who supported the Commission's proposal that carriers be required to warn their customers of the risk of toll fraud arising from the use of carrier services. Edison endorses the suggestion of Himont USA, Inc. that such warnings be provided to the customer on a regular basis.^{2/} In its comments, Sprint Corporation claims that the language in its tariff provides users with a sufficient warning of the risks of toll fraud. However, most users will never even see the tariff. Moreover, the language quoted by Sprint states only that unauthorized use of the subscriber's facilities may occur and that such use includes "the placement of calls from the subscriber's premises, and the placement of calls through subscriber-provided equipment which are transmitted or carried on the Sprint network."^{3/} Such language will be unintelligible to most users and does not constitute a proper educational warning as proposed by the Commission and supported by the vast majority of commenters.

^{2/} See Comments of Himont USA, Inc. at p. 1.

^{3/} Comments of Sprint Corporation at p. 7.

7. Carriers should also be required to notify their customers when they make a network modification that may affect the prevention or detection of toll fraud. In this regard, Edison agrees with one commenter's proposal that such notifications be made within a reasonable period of time before such modifications occur.^{4/}

8. Edison strongly supports the requirement proposed by the Commission and numerous commenters that carriers be required to offer monitoring and detection services at cost as part of their basic interexchange service offering. As evidenced by the carriers' fraud "insurance" offerings, the carriers clearly have the ability to monitor their networks for signs of unusual calling patterns and the ability to quickly detect such patterns. Such services should be offered to users at cost rather than as optional features available for an exorbitant fee. Edison must again emphasize that carriers should not be allowed to profit from fraud, but rather should leverage their robust information systems to promptly mitigate its occurrence.

^{4/} See Comments of the Pennsylvania Public Utility Commission at p. 3.

9. Equipment manufacturers, vendors, and CPE maintenance support entities also play a role in toll fraud, and should be required to bear some of the responsibility and liability for toll fraud. Edison agrees with the Commission's proposal that manufacturers be required to provide warnings regarding the potential risk of toll fraud and the consequent liability exposure associated with use of the equipment. These warnings should be incorporated into literature and manuals distributed to the customer upon purchase of a PBX and should be updated on a continuing basis. Edison supports the comments of API and other commenters that urge the Commission to subject manufacturers to a continuing obligation to investigate how their equipment can be exploited to accommodate toll fraud, as well as an obligation to provide detailed information to their customers on how such fraud occurs and how it can be prevented.^{5/} Edison also agrees with the Ad Hoc Telecommunications Users Committee that the Commission should ensure that any regulations that require specific warnings will not be deemed to preempt customers' remedies against vendors under state laws.

^{5/} Edison agrees with API that the Commission should impose an additional requirement on equipment manufacturers. Under the API proposal, to the extent a toll fraud incident is attributable to a software failure, the manufacturer would be under an obligation to cure the defect at no cost to the user. See Comments of API at p. 15.

10. As suggested by the comments filed by several parties, the warning requirements discussed above should be extended to cover equipment installers, communications systems consultants, sales agents and vendors.^{6/} CPE maintenance entities are relied upon heavily by users to properly maintain system security. In Edison's experience, maintenance vendors have failed to warn Edison about toll fraud or identify the existence of specific features that can either prevent (e.g., call blocking) or facilitate (e.g., direct inward system access) fraud. In some instances, vendor technicians have actually disrupted security measures initiated by Edison. Vendors and CPE maintenance entities should be liable at a minimum for fraud resulting from their negligence.

11. Edison recognizes that maintenance entities have disclaimed responsibility for any losses due to fraud in the terms of their maintenance agreements. In light of the general naivete of users and the vendor's exclusive access to the remote maintenance port (a frequent avenue for fraud), such provisions are unconscionable. Accordingly,

^{6/} See Comments of Leucadia National Corporation and American Investment Bank, NA at p. 3; Planned Parenthood at pp. 11-12.

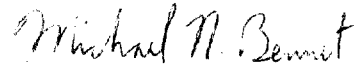
Edison agrees with API and urges the Commission to make clear that all maintenance contracts that disavow the maintenance entity's liability for fraud are per se unreasonable.^{7/}

WHEREFORE, THE PREMISES CONSIDERED, Commonwealth Edison Company respectfully requests that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

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^{7/} Comments of API at pp. 16-17.